



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/482,773	01/13/2000	John D. Dreher	2870/220	7449

26646 7590 01/28/2004

KENYON & KENYON
ONE BROADWAY
NEW YORK, NY 10004

EXAMINER

YU, GINA C

ART UNIT	PAPER NUMBER
----------	--------------

1617

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/482,773	Applicant(s) DREHER, JOHN D.	
	Examiner Gina C. Yu	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt is acknowledged of response filed on October 22, 2003. Claims 1-34 are pending. Claim rejections made under 35 U.S.C. §§ 102 and 103 as indicated in the previous Office action dated July 21, 2003 are maintained. Examiner notes that claim 11 was inadvertently omitted from rejection made under 35 U.S.C. § 103 over Kimura et al. (5690916) in view of Hineno et al. (US 6207174 B1), and apologizes for any inconvenience that this error might have caused.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 12-15, 18, and 21-27, 29, 30, 32 are rejected under 35 U.S.C. 102(a) as being anticipated by Kimura et al. (5690916) ("Kimura").

Rejection is maintained for reasons of record.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 19 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura as applied to claims 12-15, 18, and 21-27, 29, 30, 32 which are anticipated by the reference.

Rejection is maintained for the reasons of record.

3. Claims 1-7, 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimura as applied to claims 12-15, 18, 19, 21-27, 29, 30, 32, and 33

Art Unit: 1617

as above, and further in view of Hineno et al. (US 6207174 B1) ("Hineno").

Rejection is maintained for the reasons of record.

4. Claims 8, 16, 17, 20, 28, 31, and 34 are rejected under 35 U.S.C. § 103(a) as unpatentable over Kimura and Hineno as applied to claims 1-7, 9-15, 18, 19, 21-27, 29, 30, 32, and 33 as above, and further in view of Hurst ("Face Powders", Poucher's Perfumes, Cosmetics and Soaps, 1993).

Rejection is maintained for the reasons of record.

Response to Arguments

Applicant's arguments filed October 22, 2003 have been fully considered but they are not persuasive.

Examiner maintains the position that the claimed composition is old and well known in cosmetic makeup art, and the claimed method of topically applying the Kimura composition reads on the prior art.

Applicants' argue that the Kimura composition is merely used to "adjust to skin color" giving transparent look and not necessarily "skin-colored". Examiner respectfully disagrees, and finds the argument unpersuasive. The fact that the composition is used to "match a skin color" does not suggest that the composition is not skin colored.

Firstly, the prior art formulation comprises all the ingredients of the claimed composition in claim 21, namely, 9% of an interference pigment having blue reflectance with at least one metal oxide pigment (titanium dioxide) and an inorganic powder (e.g., sericite) which must render the same "skin-color", however defined by applicants. It cannot be said that the applicants' composition comprising same pigments as the Kimura invention

Art Unit: 1617

is somehow different, when all the necessarily components to make the composition are met. Furthermore, the Kimura invention is a foundation for cosmetic use, which contains variety of dyes such as red iron oxide, yellow iron oxide, and black oxide, D& C Red No. 30, which must produce color that is compatible to skin color the wearer in order to unify the color of the skin.

In response to applicants' argument that there is no possibility of using the Kimura composition to hide wrinkles or lines, examiner respectfully disagrees. The reference clearly teaches that the formulation is a foundation, which is applied to the panel whose face has light blue portion. Examiner notes that one in cosmetic art is familiar with the use of foundation and understands that a foundation is generally applied to the entire face area to cover blemishes, defects and provide a basis for further enhancement of other decorative cosmetic compositions. Applicants' argument that the user of the foundation would use the composition only to the hyperchoromic or spotted area does not fit the purposes of wearing a foundation.

Examiner maintains the position that the topical application of the Kumura foundation to face/skin disclosed achieves the applicants' purported result, whether the cosmetic wearer's wrinkles and lines are age-related, prematurely formed, or formed by extrinsic factors because the claimed methods involve the same method of topical application of same composition to the skin. Rejections are deemed proper.

Conclusion

No claims are allowed.

Art Unit: 1617

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

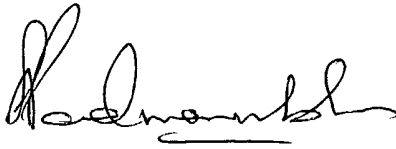
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 703-305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina Yu
Patent Examiner


SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER

1/26/04